# UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD DIVISION OF JUDGES ATLANTA BRANCH OFFICE

COPPER CRAFT PLUMBING, INC., AND KANSAS CITY PLUMBING, INC., a Single Employer and Their Alter Egos KC COMMERCIAL PLUMBING, INC. AND STUDIO 36 LLC

and CASE 17-CA-24227

DONOVAN SHAFER, an Individual

and CASE 17-CA-24291

STEVEN R. COX, an Individual

*Mary G. Taves, Esq.*, for the General Counsel. *Walter R. Roher, Esq.*, for the Respondent.

# SUPPLEMENTAL DECISION ON REMAND

MARGARET G. BRAKEBUSCH, Administrative Law Judge. This case originated with an order consolidating cases, consolidated complaint, and notice of hearing that issued on November 26, 2008, by the Regional Director for Region 17 of the National Labor Relations Board (Board). The consolidated complaint alleged that Copper Craft Plumbing, Inc. (Copper Craft Plumbing) and Kansas City Plumbing, Inc. (Kansas City Plumbing) constitute a single-integrated business enterprise and a single employer within the meaning of the Act. The consolidated complaint further alleged that Studio 36 LLC (Studio 36) and KC Commercial Plumbing, Inc. (KC Commercial Plumbing) were established by Copper Craft and Kansas City Plumbing as a disguised continuation of Copper Craft and Kansas City Plumbing for the purpose of evading responsibilities under the National Labor Relations Act (Act). The consolidated complaint additionally alleged that Copper Craft Plumbing, Kansas City Plumbing, KC Commercial Plumbing, and Studio 36 are, and have been at all material times, alter egos and a single employer within the meaning of the Act.

On April 30, 2009, I issued a decision in this case, finding that Respondents Copper Craft Plumbing, Kansas Plumbing, KC Commercial Plumbing, and Studio 36 are alter egos and a single employer and, as such, violated Sections 8(a)(1), (3), and (4) of the Act. Furthermore, in finding that Studio 36 was an alter ego of the other three entities, I applied the

"piercing the corporate veil" analysis set forth in *White Oak Coal*, 318 NLRB 732 (1995), enfd. mem. 81 F.3d 150 (4<sup>th</sup> Cir. 1996).

On November 25, 2009, the Board remanded the case to me (354 NLRB No.108). In its remand, the Board found that the analysis set forth in *White Oak Coal* is not applicable here. Citing its decision in *Flat Dog Productions*, 347 NLRB 1180, 183 (2006), the Board pointed out that its test in *White Oak Coal* is appropriate for identifying those cases where "a shareholder has so disregarded the separate identity of the corporation that it is appropriate to make his or her personal assets available to remedy the unfair labor practices of the corporation." The Board explained that where, as in this case, the General Counsel only seeks a finding that one legal entity is the alter ego of another, the *White Oak Coal* analysis is not appropriate. The Board clarified that in such instances, it will examine whether the entities have substantially identical management, business purposes, operations, equipment, customers, supervision, and ownership.<sup>1</sup> Accordingly, the Board severed the allegation concerning Studio 36's alleged alter ego status and remanded it to me for the purpose of analyzing the allegation under the appropriate standard.

The Board also noted that while I found Studio 36 to be a single employer with Respondents Copper Craft Plumbing, Kansas City Plumbing, and KC Commercial Plumbing, I did not discuss or analyze the single-employer allegation with respect to Studio 36. Accordingly, the Board remanded this allegation to me for clarification as to (a) whether I intended to find Studio 36 to be a single employer with the other entities, and (b) if so, to explain this finding under the following factors for determining single employer status: "(1) interrelation of operations; (2) common management; (3) centralized control of labor relations; and (4) common ownership of financial control."

No exceptions were filed to my findings that Copper Craft Plumbing, Kansas City Plumbing, and KC Plumbing were alter egos and a single employer or that Respondents engaged in conduct in violation of Sections 8(a)(1), (3), and (4) of the Act. Therefore, in its November 25, 2009, decision, the Board entered an order requiring Copper Craft Plumbing, Kansas City Plumbing, and KC Commercial Plumbing to remedy the violations of 8(a)(1), (3), and (4) of the Act as found in its decision. Accordingly, this decision addresses only those issues remanded to me by the Board.

# Findings of Fact

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# I. Interrelationship Among the Entities

# A. Copper Craft Plumbing, Kansas City Plumbing, and KC Commercial Plumbing

For all times pertinent to this proceeding, Copper Craft Plumbing and Kansas City

<sup>1</sup> Crossroads Electric, 343 NLRB 1502, 1506 (2004), enfd. 178 Fed. Appx. 528 (6<sup>th</sup> Cir. 2006); citing Advance Electric, 268 NLRB 1001, 1002 (1984), enfd. as modified 748 F.2d 1001 (5<sup>th</sup> Cir. 1984), cert. denied 470 U.S. 1085 (1985).

Plumbing were owned solely by Timothy and Cami Nettekoven. There is no dispute that Copper Craft Plumbing and Kansas City Plumbing have been affiliated business enterprises with common officers, ownership, directors, management, and supervision; have formulated and administered a common labor policy; have shared common premises and facilities; have provided services for, and made sales to each other; have interchanged personnel with each other; and have held themselves out to the public as a single-integrated business enterprise. The parties stipulate that Copper Craft Plumbing and Kansas City Plumbing maintain combined business and accounting records, and while maintaining separate bank accounts use such accounts in the combined operation of both businesses. In the operation of their business, Copper Craft Plumbing and Kansas City Plumbing utilized the same equipment, tools, office supplies, vehicles, and employees. The bulk of the equipment used by both companies was owned by Copper Craft Plumbing and the employees' salaries were paid by Copper Craft Plumbing. Copper Craft Plumbing and Kansas City Plumbing have also maintained the same insurance carriers and policies to cover their business operations. In the operation of their businesses, Copper Craft Plumbing and Kansas City Plumbing performed services for the same customers and used the same plumbing suppliers. Beginning in mid-2006, most of the bids for new business were made under Kansas City Plumbing. It was Timothy Nettekoven's intention that Kansas City Plumbing would eventually take over all the work of Copper Craft Plumbing. Respondent has never disputed that Copper Craft Plumbing and Kansas City Plumbing constitute a single-integrated business enterprise and a single employer within the meaning of the Act.

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Respondent also stipulated that KC Commercial Plumbing was incorporated in the State of Missouri on August 27, 2008, by Cami L. Nettekoven to own, manage, and operate as a commercial and residential plumbing contractor in the greater Kansas City geographic area. Cami Nettekoven is not only the registered agent for the corporation, but also the President and Secretary of the business.

Although the Respondent admits in its answer that Copper Craft Plumbing, Kansas City Plumbing, KC Commercial Plumbing, and Studio 36 have had substantially identical management, business purposes, operations, equipment, customers, and supervision, as well as ownership, the Respondent denies that Studio 36 is engaged in the business of plumbing and asserts that it was created solely to own a building that serves as a residence and a warehouse for Copper Craft Plumbing, Kansas City Plumbing, and KC Commercial Plumbing.

In *Diverse Steel*, 349 NLRB 946, (2007), the Board observed that it would generally find alter ego status where two entities have substantially identical management, business purposes, operations, equipment, customers, supervision, and ownership. In my initial decision, I found that KC Commercial Plumbing was established in retaliation for employees' protected concerted activities and to avoid Respondent's liability under the Act. Accordingly, I concluded that KC Commercial Plumbing is an alter ego of Copper Craft Plumbing and Kansas City Plumbing and was created as a disguised continuance of Copper Craft Plumbing and Kansas City Plumbing. Accordingly, KC Commercial Plumbing shares the same responsibilities and obligations under the Act.

As referenced above, I also found that Copper Craft Plumbing, Kansas City Plumbing, and KC Commercial Plumbing are alter egos and a single employer. In its Order of November 25, 2009, the Board also found that these entities were alter egos and a single employer.

# B. Studio 36

On August 22, 2008, Cami Nettekoven filed for the incorporation of Studio 36, a limited liability company organized to conduct a real estate investment. Both Timothy Nettekoven and Cami Nettekoven are managing partners of the corporation. Studio 36 thereafter purchased a building located at 3600 Troost Avenue in Kansas City, Missouri. The upstairs of the building became the personal residence for Timothy Nettekoven, Cami Nettekoven, and their children in October 2008. The downstairs of that same building is used by Copper Craft Plumbing, Kansas City Plumbing, and KC Commercial Plumbing as a shared facility.

Thus, there is no dispute that Copper Craft Plumbing, Kansas City Plumbing, and KC Commercial Plumbing all operated out of a shared facility that was owned by Studio 36. No rent was charged to Copper Craft Plumbing, Kansas City Plumbing, or KC Commercial Plumbing for the use of the shared facility.

# II. The Status of Studio 36

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# A. Alter Ego

Respondent asserts that Studio 36 was a corporation that was created solely to purchase and to own the building that served as the personal residence of Timothy and Cami Nettekoven, and to serve as a warehouse for Copper Craft, Kansas City Plumbing, and KC 30 Commercial. There is no evidence that Studio 36 has ever engaged in the business of plumbing. Timothy Nettekoven admitted that although Copper Craft Plumbing, Kansas City Plumbing, and KC Commercial Plumbing lease space from Studio 36, no rent is paid to Studio 36. When he was asked during the hearing whether the other corporations paid rent to Studio 36, Nettekoven responded: "No, because I have enough creditors banging on my door. 35 We did not charge any rent to anyone because I'd rather pay my creditors than - - I mean, it doesn't make sense." Nettekoven testified that he moved all of the vehicles, inventory, and plumbing equipment belonging to Copper Craft Plumbing and Kansas City Plumbing to the facility owned by Studio 36. He further explained that it had been his intention to subsequently operate KC Commercial Plumbing on the first floor of the Studio 36 facility; 40 while he and his family resided on the second floor. Nettekoven confirmed that while his wife established Studio 36 as a corporation, he was also a managing member of that limited liability company.

As the Board points out in its decision of November 25, 2009, the General Counsel is not seeking personal liability for Cami and Timothy Nettekoven. The General Counsel does,

however, seek liability for Studio 36 to remedy the unfair labor practices committed by the other Respondents and submits that Studio 36 should be held liable as an alter ego and single employer with Copper Craft Plumbing, Kansas City Plumbing, and KC Commercial Plumbing.

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In its decision in Advance Electric, 268 NLRB 1001 (1984), the Board summarized the proper analysis for evaluating the issue of alter ego. The Board stated:

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The legal principles to be applied in determining whether two factually separate employers are in fact alter egos are well settled. Although each case must turn on its own facts, we generally have found alter ego status where the two enterprises have "substantially identical" management, business purpose, operation, equipment, customers, and supervision, as well as ownership.

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# 1. Ownership and management

On August 22, 2008, Cami Nettekoven filed for the incorporation of Studio 36, a limited liability company organized to conduct real estate investment. Both Timothy Nettekoven and Cami Nettekoven are managing partners of the corporation. There is no dispute that Cami Nettekoven is the owner of KC Commercial Plumbing and that Timothy and Cami Nettekoven manage and supervise the business of KC Commercial Plumbing; just as they managed the business of Copper Craft Plumbing and Kansas City Plumbing. Cami and Timothy Nettekoven are the owners of both Copper Craft Plumbing and Kansas City Plumbing. Thus, the management and ownership of all four entities are essentially identical.

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# 2. Business purpose, operation, and customers

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The record evidence contains no evidence to indicate that Studio 36 functions as anything other than a real estate investment, or as anything other than the owner of the building serving as a personal residence for the Nettekoven family and the warehouse for Copper Craft Plumbing, Kansas City Plumbing, and KC Commercial Plumbing. Because there is no evidence that Studio 36 has ever engaged in the business of plumbing. Studio 36 shares no common customers or equipment with any of the other Respondent entities. Because there is no evidence that Studio 36 has any employees, there is no shared supervision.

# 3. Motivation for creating Studio 36

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In finding the existence of an alter ego, the Board has also looked at evidence of whether the disputed entity was created to avoid an employer's obligations or responsibilities under the Act. Cofab, Inc., 322 NLRB 162, 163 (1996); Fugazy Continental Corp., 265 NLRB 1301, 1302, (1982). The Board has noted, however, that while a relevant factor in the analysis of alter ego may be whether the entity was created in an attempt to enable another to avoid its obligations under the Act, such a motive is not necessary for finding alter ego status. Fallon-Williams, Inc., 336 NLRB 602, (2001); APF Carting, Inc., 336 NLRB 73 fn. 4 (2001).

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In asserting Studio 36's liability, Counsel for the General Counsel argues: "The overarching evidence of corporate misuse is, of course, the testimony concerning the establishment of corporate identities under Cami Nettekoven's name in an effort to hide Timothy Nettekoven's involvement in the business." Counsel for General Counsel further argues that Timothy Nettekoven used both KC Commercial Plumbing and Studio 36 as shells of Copper Craft Plumbing and Kansas City Plumbing "so that he could continue in the plumbing business without the worries of unfair labor practice liability."

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The Board found KC Commercial Plumbing to be an alter ego of Copper Craft Plumbing and Kansas City Plumbing. Within 5 days of incorporating Studio 36, Cami Nettekoven filed for the incorporation of KC Commercial Plumbing, with the apparent intention of conducting the same business operation as had been conducted by Copper Craft Plumbing and Kansas City Plumbing. There is no evidence that Studio 36 was established for any other purpose but to serve as the owner of the building that was to be used for KC Commercial Plumbing's operation and for the Nettekoven family residence. Thus, it appears that one of the purposes of its creation was to provide a means for Copper Craft Plumbing and Kansas City Plumbing to continue their operation through the operation of KC Commercial Plumbing. Although the timing and circumstances of Studio 36's creation are certainly suspect, this factor alone is not sufficient to establish its status as an alter ego of the other Respondent entities.

# 4. Conclusions concerning alter ego status

25 In determining whether two facially independent employers constitute alter egos under the Act, the Board has long held that while each case turns on its own facts, the Board has generally found alter ego status where the two entities have substantially identical ownership, management, business purpose, operation, equipment, customers, and supervision. Sobeck Corp., 321 NLRB 259, 266 (1996). Because Studio 36 did not engage in the business of 30 plumbing, the entity shares no business purpose, operation, or customers with the other three entities. Although the equipment that was previously used by Copper Craft Plumbing and Kansas City Plumbing is now stored or maintained in the Studio 36 facility, there is no evidence that Studio 36 shares or uses the same equipment as the other three entities. The record evidence simply reflects that Studio 36 provides the residence for Timothy and Cami 35 Nettekoven and functions as the operating and warehousing facility for the other three corporations. Not only was there no compensation paid to Studio 36, there appears to be an absence of any other arm's length transactions between Studio 36 and the other corporations. The lack of an arm's length relationship, however, cannot solely establish an alter ego status when other critical factors are missing. 40

As found in my initial decision, KC Commercial Plumbing was created in an attempt to evade the Respondents' responsibilities and obligations under the Act. Certainly the evidence demonstrates that Studio 36 was created to facilitate the disguised continuance of Copper Craft Plumbing and Kansas City Plumbing through KC Commercial Plumbing. Despite Studio 36's role in doing so, and even though Studio 36 has a unity of interest with

the other three entities, the overall evidence does not support a finding that Studio 36 existed as an alter ego to the other three entities.

# **B.** Single Employer Status

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Although the terms "single employer" and "alter ego" have sometimes been used interchangeably, the Board has long recognized that the terms refer to different concepts. *Rebel Coal Co.*, 279 NLRB 141, 143 (1986). The Board has not only explained that an alter ego is not to be mistaken as merely a subset of the single employer status, but also explained that while "alter ego" and "single employer" are related, these concepts are nevertheless separate concepts. *NYP Acquisition Corp.*, 332 NLRB 1041, fn. 1 (2000); *Johnstown Corp.*, 322 NLRB 818 (1997).

In its decision in *Airport Bus Service*, 273 NLRB 561 (1984), the Board set out its statement of the law with respect to alter ego or single employer status. The Board noted:

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It is well established that in determining whether two or more nominally separate businesses operating simultaneously are sufficiently interrelated so that they may be treated as a single integrated business enterprise, the Board looks to four principal factors: common management, centralized control of labor relations, interrelationships of operations, and common ownership or financial control. No single criterion is controlling, although the first three factors, which reveal the degree of operational integration, are more critical than common ownership. *Id* at 561.

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# 1. Common ownership and management

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Although the ownership and management of each entity may not be identical, where they all include members of the same family, the requirement of common ownership and management is met. *Crawford Door Sales Co.*, 226 NLRB 1144 (1976). In August 2008, Cami Nettekoven filed for the incorporation of Studio 36 and both Cami Nettekoven and Timothy Nettekoven have been the managing partners of Studio 36 since its inception. KC Commercial Plumbing was incorporated on August 27, 2008, by Cami Nettekoven to own, manage, and operate as a commercial and residential plumbing contractor. Since 2007, Cami and Timothy Nettekoven have been the sole owners and sole shareholders of both Copper Craft Plumbing and Kansas City Plumbing. Inasmuch as there are no other owners or managers of any of these four entities other than Cami Nettekoven and Timothy Nettekoven during the relevant time period, I find Studio 36 to share both ownership and management with Copper Craft Plumbing, Kansas City Plumbing, and KC Commercial Plumbing.

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# 2. Interrelationship of operations

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The record contains no evidence that Studio 36 has engaged in the business of plumbing since its inception in 2008. Respondent asserts that the corporation was created solely to purchase and to own the personal residence for Timothy and Cami Nettekoven and

to serve as a warehouse for Copper Craft Plumbing, Kansas City Plumbing, and KC Commercial Plumbing. There is no dispute that while Studio 36 leases space to the other three entities, no rent is charged. All of the plumbing equipment, inventory, and vehicles belonging to Copper Craft Plumbing, Kansas City Plumbing were moved by Timothy Nettekoven to the Studio 36 facility. Timothy Nettekoven testified that it was his intention to operate KC Commercial Plumbing on the first floor of the Studio 36 facility.

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The fact that Studio 36 was not actively engaged in the business of plumbing and served primarily as the building owner where the operation of the other three entities merged does not negate a finding of single employer status. The Board has held that, "Notwithstanding the different business purposes between real estate companies and other types of businesses, a single employer relationship can be found particularly where there is evidence of a lack of arm's length relationship between the entities." *Three Sisters Sportswear Co.*, 312 NLRB 853, 863 (1993), enfd. 55 F.3d 684 (D.C. Cir. 1995). Additionally, in other cases where there the dealings between the entities were not found to be characteristic of an arm's length relationship and where the dealings further the common interests of the overall business enterprise, the Board has found realty companies and operating companies to constitute single integrated enterprises responsible for remedying unfair labor practices. See *G. Zaffino & Sons*, 289 NLRB 571, 577 (1987); *Capital Theatre*, 231 NLRB 1370, 1374 (1977). Thus, the fact that Studio 36 is not involved in the business of plumbing does not defeat a finding that it is a single employer with the other entities.

# 3. Centralized control of labor relations

The Board typically views the fourth factor-centralized control of labor relations- as a critical factor in assessing a single-employer status. *AG Communication Systems Corp.*, 350 NLRB 168 (2007); *Mercy Hospital of Buffalo*, 336 NLRB 1282, 1284 (2001) When the entities in issue all have their own complement of employees, the existence of this factor would necessarily carry a greater significance. Where, however, one of the entities in issue has no employees, this factor is accorded less importance. *Three Sisters Sportswear Co.*, at 863. Furthermore, the finding of a single-employer status is not undercut by the lack of specific evidence indicating centralized control of labor relations where one of the entities has no employees. *Bolivar-Tees, Inc.*, 349 NLRB 720, 722 (2007); *Three Sisters Sportswear Co.*, at 863. The Board has specifically noted that the absence of statutory employees does not necessarily bar a single-employer finding. *Cimato Brothers, Inc.*, 352 NLRB 797, 799 (2008).

# 4. Lack of arm's-length relationship

In addition to its discussion of the criteria described above, the Board often references the absence of an arm's length relationship between unintegrated entities in its analysis of single employer status. The Board has, in fact, long recognized that the absence of an arm's length relationship between unintegrated entities is the "hallmark" of a single employer relationship. *Wheeling Brake Block Manufacturing Company*, 352 NLRB 489, 506 (2008). In its decision in *Paint America Services, Inc.*, 353 NLRB No. 100, slip op. at 1 (2009), the

Board clarified however, that while a single employer status is generally characterized by a lack of an arm's length relationship, this factor is not a separate test; but a generalized description of the four-factor test. See also *Shane Steel Processing, Inc.*, 353 NLRB No. 58, slip op. at 1 (2008).

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Thus, while a single employer status ultimately depends on "all the circumstances of a case," the status is usually characterized by the absence of the "arms length relationship" found among unintegrated companies. *Centurion Auto Transport, Inc.*, 329 NLRB 394, 395 (1999); *Dow Chemical Co.*, 326 NLRB 288 (1998). As discussed above, the evidence supports a finding that an arm's length relationship did not exist between Studio 36 and the other three entities.

# C. Conclusions

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A single-employer relationship is found to exist when two or more employing entities are in reality part of a single integrated enterprise. *Centurion Auto Transport, Inc.*, at 395. Although the evidence does not support a finding that Studio 36 is an alter ego of any of the other three entities, there is, however, sufficient evidence to find single employer status. Based upon the overall record, I find that Studio 36 LLC, together with Copper Craft Plumbing, Inc., Kansas City Plumbing, Inc., and KC Commercial Plumbing, Inc. constitute a single employer<sup>2</sup> and are therefore jointly and severally liable for remedying the violations found by the Board in its decision of November 25, 2009.

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### **Conclusions of Law**

Studio 36 LLC, Copper Craft Plumbing, Inc., Kansas City Plumbing, Inc., and KC Commercial Plumbing, Inc., constitute a single-integrated business enterprise and a single employer within the meaning of section 2(6) and (7) of the Act, and they are jointly and severally liable to remedy the unfair labor practices found by the Board in its decision of November 25, 2009. Studio 36 LLC, however, is not an alter ego of Copper Craft Plumbing, Inc., Kansas City Plumbing, Inc., and KC Commercial Plumbing, Inc.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended:<sup>3</sup>

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# **ORDER**

Because Studio 36 LLC, Copper Craft Plumbing, Inc. Kansas City Plumbing, Inc., and KC Commercial Plumbing, Inc. constitute a single employer within the meaning of the Act, its officers, agents, successors, and assigns, shall remedy the unfair labor practices as found

This finding is based upon undisputed record evidence and is not a credibility finding.

If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

therein. Dated, Washington, D.C., April 2, 2010. Margaret G. Brakebusch Administrative Law Judge 

by the Board in its decision of November 25, 2009, and in accordance with the Board's Order